

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 9

In the Matter of

PIKEVILLE UNITED METHODIST HOSPITAL  
OF KENTUCKY, INC. <sup>1/</sup>

Employer

and

Case 9-RC-17607

UNITED STEELWORKERS OF AMERICA,  
AFL-CIO-CLC

Petitioner

**DECISION AND DIRECTION OF ELECTION**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, herein called the Act, a hearing was held before a hearing officer of the National Labor Relations Board, herein called the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, <sup>2/</sup> the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction.
3. The labor organization involved claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

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<sup>1/</sup> The name of the Employer appears as amended at the hearing.

<sup>2/</sup> The Employer and the Petitioner timely filed briefs which I have carefully considered in reaching my decision.

5. The Employer, a nonprofit corporation, is engaged in the operation of an acute care hospital in Pikeville, Kentucky, where it employs approximately 594 employees in the unit found appropriate.

The Petitioner seeks to represent a unit (hereinafter referred to as the Unit), consisting of all technical employees, skilled maintenance employees and nonprofessional employees employed by the Employer at its Pikeville, Kentucky facility but excluding all business office clerical employees, registered nurses, professional employees, guards and supervisors as defined in the Act. Although the Employer agrees that the unit sought is appropriate, the parties disagree as to the inclusion of certain employee categories within its scope. <sup>3/</sup> Thus, the Employer would include 24 patient accounting clerks in the Unit whom the Petitioner contends should be excluded as business office clericals. Conversely, the Petitioner contends that an insurance verifier should be included in the Unit, whom the Employer views as a business office clerical and would exclude from the unit. In addition, the Employer, contrary to the Petitioner, takes the position that 11 individuals categorized as relief shift supervisors in the respiratory therapy department are supervisors within the meaning of Section 2(11) of the Act. <sup>4/</sup>

#### Background:

On August 12, 1998, following an election held pursuant to a stipulation between the parties in Case 9-RC-17114, the Petitioner was certified as the collective-bargaining

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<sup>3/</sup> The parties agree that employees in the following classifications should be included in the Unit: application analyst, buyer, cardiovascular tech, carpenter, clerk, cook, copier specialist, courier, CSS technician, diet clerk, edit control stat clerk, EKG/EEG tech, electrician, employee health assistant, EMT/emergency room tech, equipment specialist/CRTT, financial coordinator, food service clerk, food service worker, general maintenance worker, histology technologist, housekeeper, HVAC technician, information desk clerk/gift shop attendant, information systems operator, information systems tech, inventory tech, lab aide, licensed practical nurse, linen room worker, mail clerk, maintenance tech, materials management tech, medical education coordinator, medical lab tech, medical review/LPN, medical staff & PI assistant, monitor tech/aide, nurs assit/psy aide/rta, nursing assistant II, occupational health nurse, ORT/LRT/anesthesia aide, painter/paper hanger, paramedic, patient care attendant, performance facilitator, pharmacy tech/IV ADD tech, phlebotomist, plumber, plumber assistant, polysomnographic tech, programmer, programmer analyst, quality management tech, radiation therapist, radiation therapy tech, radiologic technologist, radio information systems coordinator, receiving clerk, receptionist/clinic clerk, receptionist/patient liaison, REG polysomnographic tech, registrar, rehab tech, residency program coordinator, respiratory therapy student, sales representative, secretary, spec proc tech-radiology, staff technician (CRTT/RCP), staff therapist, surgical services mat cor, telecommunications specialist, transport aide, and unit secretary/telemetry tech.

The parties further agree that cashiers, payroll coordinators, accounts receivable clerks, accounts payable clerks, reimbursement employees and patient counselors are business office clericals and should be excluded from any unit found appropriate.

<sup>4/</sup> In its brief in this matter, the Employer, for the first time, raised an issue with respect to the supervisory status of Respiratory Therapy Department Clinical Supervisor Kathleen Pugh. Her supervisory status was not identified as an issue by either party at the hearing and was not addressed by the Petitioner in its brief. The Employer indicates in its brief that it considers Pugh a supervisor within the meaning of the Act. Some testimony appears in the record with respect to Pugh's duties. However, since her supervisory status was not made an issue at the hearing, I cannot be certain that I am aware of all her duties and responsibilities. I am further unaware of the Petitioner's position on her status. Therefore, I will not address her status in this decision but either party is free to instruct its observer at the election in this matter to challenge Pugh's ballot if she appears to vote.

representative of essentially the unit it seeks to represent in the instant proceeding. Thereafter, the parties engaged in negotiations but did not reach agreement on a contract. Following the filing of a decertification petition in Case 9-RD-1912, an election was conducted on September 7, 2000, in which challenged ballots were determinative. Subsequently, a hearing was conducted before a Hearing Officer of the Board who, pursuant to a stipulation of the parties, recommended that challenges to 45 ballots be sustained - which left only a minority of employees having voted to continue to be represented by the Petitioner. On August 1, 2000, the Board certified the results of the election. <sup>5/</sup>

#### Overview:

The Employer is licensed to operate 221 acute care beds (22 of which are psychiatric beds). However, the Employer is currently operating only 186 patient beds. The Employer offers a broad range of medical services, including an emergency department; obstetrical services; a neo-natal intensive care unit; specialty services, such as urology, orthopedics, "ENT" and ophthalmology; general and specialized in-patient surgery including an open heart surgery program; out-patient surgery; a cardiology program which involves stent, angioplasty and balloon angioplasty procedures; oncology services on both an in-patient and out-patient basis; pediatric services for acutely ill children and infants and laboratory services.

Although the Employer maintains three small diagnostic clinics at other locations, as well as provides out-patient physical therapy in a building where an affiliated doctor maintains his practice, <sup>6/</sup> the Employer's operations are primarily located within four interconnected buildings on its main campus. These consist of what is referred to as the "Miners Building" (an older building formerly housing a hospital facility operated by the United Mine Workers of America), the Elliot Building (until recently the primary anchor building of the campus), the Leonard Lawson Cancer Center, and what is referred to as the "New Tower" (a ten story, 25,000 square foot facility which opened for patient care in December 2000 and which appears to now comprise the primary locus for patient care).

The Employer employees approximately 1,100 individuals in various positions. The Employer's management/supervision essentially flows from a board of directors, to Senior Vice-President/Chief Operating Officer Joann Anderson, to seven vice-presidents each responsible for several defined operations of the hospital, to directors (responsible for two or more departments) or managers (who are responsible for only one department), to the immediate supervisors.

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<sup>5/</sup> Much of the background is reflected in general terms in the record. Thus, I have taken administrative notice of certain of the details and dates related to these events. It is well settled that the Board may take official notice of its own proceedings and rely thereon. See, e.g., *United States Postal Service*, 273 NLRB 1746, fn. 2 (1985).

<sup>6/</sup> It does not appear that the parties intend to include any employees working in these outlying facilities in the Unit.

## The Employees in Dispute:

### Patient Accounting Clerks:

There are currently 24 patient accounting clerks. The patient accounting clerks were not included in the certified unit in Case 9-RC-17114, which was decertified in Case 9-RD-1912. At the time of those proceedings, however, the patient accounting clerks along with the controller, as well as employees working with payroll, general accounting, accounts payable, accounts receivable and reimbursement, were housed off the Employer's main campus site in a bank building. Since the opening of the New Tower building, however, all the employees formerly located in the bank building have been moved to the 6<sup>th</sup> floor of the Elliot Building, which is directly accessible to the 6<sup>th</sup> floor of the New Tower where the pediatric unit is located. It appears that the patient accounting clerks are the only employees who were previously located in the bank building that either party contends should be included in the Unit, the remainder being excluded as business office clericals. <sup>7/</sup>

In addition to the employees transferred from the bank building, the case management nurses are also located on the 6<sup>th</sup> floor of the Elliot building. The parties agree that the LPN case management nurses (as opposed to the RN case management nurses) are properly included in the Unit. The case management nurses work with patients and doctors to help patients through the system from both a clinical and financial standpoint. For example, case management nurses become involved if Medicare guidelines only allow reimbursement for hospitalization for a set number of days for a particular procedure and it is determined that a longer stay is actually needed. In such a situation, case management nurses attempt to document the need for a longer stay to Medicare or to have the stay covered in some other form, or by some other carrier or provider of financial services.

The Job Summary of the patient accounting clerks sets forth their duties as: <sup>8/</sup>

To promptly file hospital claims with third party payers, following up in a timely and efficient manner, to ensure maximum reimbursement is received for services provided. To assist the public in obtaining full benefits from their coverage and in understanding billing procedures, always maintaining good public relations.

When a patient comes to the hospital for any form of care, an employee classified as a registrar (whom the parties agree is a unit employee), registers the patient into the computer system. The registrar then obtains basic demographic information from the patient such as the patient's name, address, telephone number, age, place of employment and health insurance provider.

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<sup>7/</sup> See footnote 3.

<sup>8/</sup> Although these employees are referred to as "patient accounting clerks," from their job description, their actual title is "Patient Accounts Billing Clerk."

As a patient moves through the care process, charges for procedures continue to be inputted into the patient's computerized record by employees in the various departments which provide treatment. The Employer's computer system is set to automatically "drop bill" for charges that are 4 days old. After the bill is generated by the computer system, a patient accounting clerk reviews the demographic information, reviews the charges on the account for reasonableness, researches the "bill to" addresses, and follows up with third party payers on accounts that are old and past due. In the course of the review, a patient accounting clerk may communicate with a registrar or staff in the patient's treatment area with respect to problems with the bill. For example, if a patient accounting clerk discovers that a claim cannot be processed by Medicare because the diagnoses do not match the test that was ordered by the physician, the patient accounting clerk would contact the registrar to find out what information obtained at the time the service was provided that did not get into the computer system. Patient accounting clerks correct billing errors in the computer system. Except with respect to charges for ambulance services, however, they are not responsible for the initial inputting of charges into the computer system.

On occasion other employees may have to initiate contact with patient accounting clerks in the course of the other employees' duties. For example, if a registrar is inputting data from a patient whose insurance plan is not coded into the Employer's computer system, the registrar may contact a patient accounting clerk to have him/her input the plan into the system. A case management nurse may also discuss the need for additional verification for Medicare/Medicaid with patient accounting clerks.

Patient accounting clerks contact insurance carriers to determine why payment has not been timely made and may have to deal with problems associated with incorrect filings for reimbursement or qualifying the patient for coverage. Patient accounting clerks apparently make little effort to reach patients by telephone to collect directly from them. With respect to co-pays, a phone contact may be made to the patient with respect to bills over a certain amount, otherwise a computer-generated mailing will be made with respect to co-pays on a 15, 30 and 45-day cycle.

If a patient does not have insurance, the registrar will offer the patient a charity application at the time the patient's demographic information is taken. If a patient does not have insurance, one of two individuals classified as Patient Financial Counselor/Resource Counselor, a category not encompassed in the Unit,<sup>9/</sup> is supposed to make contact with the patient to see if they can be of assistance. If not already completed, they will offer the charity application to the patient. If an uninsured patient has for some reason not previously been offered a charity application, a patient accounting clerk may make an application available to the patient. The patient accounting clerks do not have the authority to approve any such application -- this being within the purview of the counselors.

Although the frequency with which patient accounting clerks interact in person with patients is unclear, it does occur. The interaction happens when a patient comes in to talk about their

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<sup>9/</sup> This classification (or these classifications) of employee(s) is (are) not found within the categories of employees which the parties agreed comprise the Unit employees. Moreover, it appears that these employees are the "patient counselors" that the parties specifically agreed were excluded from the Unit as business office clericals as set forth in footnote 3.

account or to explore methods of payment. This appears to be a daily occurrence with respect to at least some members of the group of patient accounting clerks but not with respect to each such employee.

With respect to supervision, Margaret Kiser is the patient accounting clerks' manager. Under her supervision are the patient accounting clerks and the hospital's two cashiers - a position which the parties agree is appropriately excluded from the Unit as a business office clerical position. Kiser does not supervise any employees whom the parties agree should be included in the Unit. There are three supervisors working under Kiser who directly oversee the patient accounting clerks: Anita Lang, who supervises clerks working with commercial insurance; Karen Smith, who supervises clerks working with Medicare; and Terra Newsome, who supervises clerks working with Medicaid as well as with some commercial insurers. The patient accounting clerks work on an 8 a.m. to 4:30 p.m. schedule.

#### Analysis:

In its Final Rule on Collective-Bargaining Units in the Health Care Industry (herein the Rule), the Board provided that in an acute care hospital, as here, any of a maximum of eight units may be appropriate for collective bargaining.<sup>10/</sup> Pursuant to the Rule, business office clericals may comprise a separate appropriate unit and may be excluded from other units. The Rule did not itself, however, resolve the issue of which employees should be considered business office clericals. The Board noted in its discussion of the Rule that there may be "clericals who perform functions similar to those performed both by service employees and business office clericals or else perform a combination of functions such that they cannot be readily classified as one or the other. . . . The placement of particular classifications which may be disputed in a particular case is, for the time being, left to a case-by-case adjudicative approach."<sup>11/</sup>

The Board has defined business office clericals as "those clerical employees who, because they perform business office functions, have minimal contact with unit employees or patients, work in geographic areas of the hospital, or perform functions, separate and apart from service and maintenance employees, and thus do not share a community of interest with the service and maintenance employees. . . ." *St. Luke's Episcopal Hospital*, 222 NLRB 674, 676 (1976). See also, *Rhode Island Hospital*, 313 NLRB 343, 359 (1993). In contrast, the Board has considered other clerical positions, frequently called "hospital clericals," to be properly included in a service and maintenance or other nonprofessional unit. Hospital clericals perform duties closely related to patient care, have frequent contact with unit employees, are commonly supervised with them, and tend to be located throughout the hospital, within the various departments where unit employees work. *St. Elizabeth Hospital of Boston*, 220 NLRB 325 (1975); *Baptist Memorial Hospital*, 225 NLRB 1165 (1976).

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<sup>10/</sup> The Rule is set forth at 29 CFR Part 103, 54 Fed.Reg. 16336, 16347-16348, 284 NLRB 1579, 1596-1597 (1989). Detailed explanations regarding each segment of the Rule are found in the Second Notice of Proposed Rule Making, 29 CFR Part 103, 53 Fed.Reg. 33900 (1988), 284 NLRB 1527, and in the Final Rule, 54 Fed.Reg. 16336, 284 NLRB 1586 (1989).

<sup>11/</sup> See, Second Notice of Proposed Rule Making, *supra*, 53 Fed.Reg. 170, 33926; 284 NLRB at 1565.

With respect to the job duties or functions of business office clericals, the Board noted during its rule making considerations involving their placement that, “Business office clericals are primarily responsible for a hospital’s financial and billing practices and deal with Medicare, DRG’s varying price schedules, multiplicity of insurance types and new reimbursement systems. Increasing computerization of financial management has led to specialization of other hospital employees.” [References to the record omitted]. The Board noted that an argument had been advanced during the rule making process that many different professional and nonprofessional hospital classifications use computers but added, “Unlike these employees, however, business office clericals do not engage in any form of patient care and are not responsible for a patient’s physical or environmental health.” <sup>12/</sup>

The patient accounting clerks’ primary responsibility appears to involve resolving insurance matters so that payment is received from insurers or compiling and applying data to be used to seek governmental or other third party payment for the patient’s treatment. In performing certain of these duties a patient accounting clerk may have some interaction with patients but such contact appears, for the most part, to be focused not on the patient’s well being but to obtain data to be utilized in seeking recompense for the Employer. <sup>13/</sup> In this regard, I note that the patient accounting clerks’ work area is isolated from patient treatment areas. <sup>14/</sup> In my view, therefore, the touchstone of these employees’ job duties indicates that they are business office clericals.

Although there is some interaction with bargaining unit members, for the most part, the employees working on the 6<sup>th</sup> floor of the Elliot Building <sup>15/</sup> are stipulated to be excluded from the Unit as business office clericals. Moreover, I note that there are at least two levels of supervision/management over the patient accounting clerks who have no supervisory responsibility for Unit employees. <sup>16/</sup>

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<sup>12/</sup> Id., 53 Fed.Reg. 170, 33924, 284 NLRB at 1562.

<sup>13/</sup> The Board has determined that patient contact for these purposes is not sufficient to distinguish an employee from other business office clerical employees. *Grey Nuns of the Sacred Heart*, 221 NLRB 1215, 1217 (1975). See also, *Southwest Community Hospital*, 219 NLRB 351, 352 (1975); *Medical Arts Hospital of Houston, Inc.*, 221 NLRB 1017, 1018 (1975); *Baptist Memorial Hospital*, 225 NLRB 1165, 1168 (1976).

<sup>14/</sup> While the Employer in its brief asserts that the patient accounting clerks visit patients in the patients’ rooms in the course of their duties - this fact is not found in that portion of the record cited by the Employer as supporting this assertion, nor in any other section I could find.

<sup>15/</sup> Referred to by the Employer’s Chief Financial Officer Danny Harris as the “financial areas.”

<sup>16/</sup> The Board noted in arriving at the conclusion that business office clericals may be excluded from other nonprofessional units, “The differences in skills and functions are underscored by the separate supervision of business office clerical departments, which has resulted from the almost universal centralization of business office functions.” 53 Fed.Reg. 170, 33924, 284 NLRB at 1562.

Based on the foregoing, the record as a whole and having carefully considered the arguments of the parties at the hearing and in their briefs, I shall exclude the patient accounting clerks from the Unit as business office clericals. <sup>17/</sup>

Insurance Verifier:

Edith Faye Akers is the Employer's sole employee currently carrying the title of Insurance Verifier. Akers works in the Leonard Lawson Cancer Center. The center is divided into three departments – radiation therapy, pain management and oncology. There are three radiation therapists, a radiation assistant, a physicist, a unit secretary and an RN shift supervisor assigned to radiation therapy. There are four RNs, an RN shift supervisor, a unit secretary and a physician, who work in the oncology department. Assigned to the pain management department is an RN shift supervisor, <sup>18/</sup> a staff RN, a unit secretary, a transporter and Akers.

The Job Summary of the Insurance Verifier sets forth her duties as:

Responsible for working with workers compensation questionnaire, verifying insurance and completing insurance forms. Provides patient with basic nursing services under the supervision of a Registered Nurse.

There is some dispute as to Akers' actual work duties. However, it is clear that the core of what Akers actually does during the majority of her work week involves reviewing the pain management physician's plan of treatment and then getting the treatment approved by the reimbursing entity as well as assuring that utilized medications are pre-certified. Akers does this

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<sup>17/</sup> The Employer notes in its brief that in *Rhode Island Hospital* certain clericals who had some duties involved with patient accounts were grouped with nonprofessionals. With the exception of a group of emergency billing department clerks, these employees had daily constant contacts with the patients - more in line with the registrars in the instant case. As the Board stated, "Most of the clericals at issue here are, as indicated, located in areas frequented by patients. They do not work in predominantly business areas; other nonprofessionals are nearby. The patient account representatives even rotate, on a weekly basis, to the clinics themselves." *Rhode Island Hospital*, 313 NLRB at 362. Thus, the factual situation with respect to the clericals in *Rhode Island* is clearly distinguishable from the patient accounting clerks in the instant case. While the emergency billing department clerks in *Rhode Island* were placed in the nonprofessional unit, this was because the Board deemed "it most appropriate to place them with the other emergency room clericals and consider them as a group to be hospital clericals, rather than to divide the group between two units." *Id.* Again, this is not a consideration in the instant case because the patient accounting clerks themselves apparently comprise a department.

The Employer also cites a finding by the Board in *William W. Backus Hospital*, 220 NLRB 414 (1975) that certain admitting clerks were hospital clericals rather than business office clericals in support of its argument that the patient accounting clerks should not be viewed as business office clericals. However, the admitting clerks in *William W. Backus Hospital* were responsible in part for assigning patients to units based upon bed availability and nature of their illness and were in "continual contact with patients and other service and maintenance employees," with a portion of their work involving taking patients to the nursing units. *Supra* at 416. Thus, they can be considered in no way comparable to the patient accounting clerks in the instant case.

<sup>18/</sup> The Employer considers the RN Shift Supervisor over the pain management department (Joyce Slone) to be a supervisor within the meaning of the Act. The Petitioner declined to stipulate to this conclusion based upon a lack of knowledge as to Slone's authority.

by phone contacts, faxes and mailings. In this regard, Akers deals with insurers and with workers compensation providers. She also inputs codes with respect to charges for medications utilized in the cancer center into the computer system. Although Akers goes to each department in the cancer center to collect these charges, on Monday, Tuesday, Thursday and Friday, she spends 75 to 95 percent of her time in her office performing her duties. While in her office, however, Akers apparently still sees a number of workers in the center because her office is also a quasi storage area for supplies. Akers' office is located well within the confines of the clinic and, except on Wednesdays (as will be dealt with below), is removed from patient care areas.

The unit secretary in pain management (a position included in the Unit) is Misty Whited. Akers apparently performed Whited's duties prior to early 2001. Although there is some evidence that when Whited is absent, calls are forwarded to other unit secretaries, Akers reports that she occasionally covers for Whited's absence.<sup>19/</sup> Moreover, Akers has been advised that she will be covering for Whited when Whited is absent during an upcoming pregnancy leave. Akers reports that she also covers for Whited during Whited's lunch breaks – answering the phone and scheduling patients for their appointments. Akers has also covered for the oncology unit secretary (a position included in the Unit) on three occasions within the last year – answering the phone in the area, scheduling patient appointments and inputting lab work. As part of her own duties, Akers occasionally schedules a patient for treatment following approval for reimbursement.

As noted above, on Mondays, Tuesdays, Thursdays and Fridays Akers spends the vast majority of her time in her office; however, on Wednesdays she spends little, if any, time there. On Wednesdays invasive radiology procedures are performed at the center. On Wednesdays Akers is required to wear green scrubs, is stationed in an open area of the clinic near Whited's desk and assists Whited with Whited's patient paperwork, calls patients from the waiting area for treatment, occasionally does patient assessment forms and may procure the patient's "vital signs."<sup>20/</sup> Akers assists patients from the operating room and escorts them to the recovery room. Akers also helps patients to her office, which on Wednesdays is utilized as a patient changing room, and assists them into a wheelchair and, thereafter, helps the transporter employee (a position included in the Unit) take them to the vehicle which transports the patient home.

#### Analysis:

Although Akers' work with respect to reimbursement might militate towards the conclusion that she is a business office clerical, an overwhelming number of other factors lead me to the conclusion that she is a hospital clerical and thus appropriately included in a unit with other nonprofessional employees.

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<sup>19/</sup> No individual who works directly with Akers or immediately over her testified at the hearing in this matter. While the Director of Nursing, who has responsibility for surgery and oncology, testified generally as to her understanding of what Akers' duties are, this did not always comport with Akers' later testimony. Since there was no direct refutation of the specifics offered by Akers, I rely upon her rendition of what she is actually assigned to do, rather than what higher management might assume are her duties.

<sup>20/</sup> In this regard, it may be noteworthy that Akers spent a number of years as a nurses aide prior to assuming her current position.

As noted previously, business office clericals typically work in departments separate and apart from service and maintenance employees, perform business office work which is only tangentially related to the work done by service and maintenance workers, have little contact with these other nonprofessional employees and are separately supervised. *William W. Backus Hospital*, 220 NLRB 414, 415 (1975). Hospital clericals are usually located in departments throughout a hospital where they perform work related to the functions of service and maintenance employees and are subject to the same supervision. *Rhode Island Hospital*, supra.

Akers does not work in the Employer's financial or general office area with other business office clericals. On a daily basis Akers has at least some marginal interaction with other unit employees (such as her covering for Whited at lunch and gathering charges) and on Wednesdays Akers spends her entire workday physically working with other unit employees; i.e., Whited and the transporter assisting in providing patient care. Moreover, there is no level of supervision over Akers which does not also have responsibility for employees included in the Unit.

With respect to her duties with regard to patients, Akers' job summary includes the duty of providing patients with basic nursing services under the supervision of a Registered Nurse. It is clear that this is how she spends her entire Wednesday. Indeed, in light of these duties it is understandable why Akers was moved into her current position from a nurses' aide position - a position included within the unit.

Based on the foregoing, the entire record and having carefully considered the arguments of the parties at the hearing and in their briefs, I find that the position of Insurance Verifier is not a business office clerical position and is appropriately included in the Unit.

#### Respiratory Therapy Department Relief Shift Supervisors:

The Employer's Respiratory Therapy Department falls generally within its Cardio Pulmonary Department along with four other small departments - the Sleep Laboratory, Infant Sleep Laboratory, EKG Department and Cardio Pulmonary Rehabilitation Department. Linda Greer is the overall director of Cardio Pulmonary Services. Beneath Greer in the supervisory hierarchy is Clinical Supervisor Kathleen Pugh. There are four individuals whom the parties stipulate are supervisors in the Respiratory Therapy Department directly over the respiratory therapists working in the department. In addition to these four individuals, there are approximately 33 respiratory therapists in the Respiratory Therapy Department. Eleven of these respiratory therapists are categorized by the Employer as "Relief Shift Supervisors."

The correct titles of the employees generally referred to as respiratory therapists are either Staff Technician or Staff Therapist - the distinction being that the Staff Therapist has more schooling and has passed "the registry." The duties of the two classifications, however, appear essentially the same. In general terms it is the responsibility of the respiratory therapists to perform breathing treatments on patients and maintain patients on ventilators. They perform their work in such areas of the hospital as the emergency room, the Neo-natal Intensive Care Unit, the Surgical Intensive Care Unit and the Medical Intensive Care Unit.

The shift supervisors wear a pager to allow Greer to contact them if the need arises. The shift supervisors are over the approximately seven therapists on a shift. The shift supervisor is not involved in assigning employees to shifts. With regard to work assignments during a shift, a physician ordering respiratory treatment results in a unit secretary entering the treatment into the hospital's computer system. The computer system then generates forms setting forth the respiratory treatments needed. The shift supervisor audits the forms for any obvious mistakes and assembles them into groupings referred to as a "book" for each therapist. The shift supervisor tries to equalize the workload and tries to group the treatments by floor/room for greatest efficiency. In general it is assumed that most therapists can perform any function needed but the inexperience of certain employees may be a factor in formulating certain books. In this regard, it is estimated that there are three relatively new therapists whose inexperience may be a factor in assigning work. Shift supervisors themselves perform treatments during their shift but less frequently than other therapists so the shift supervisor can perform his/her additional duties.

During a shift the coverage provided by the respiratory therapy department often fluctuates. Because of this fact, a shift supervisor may need to reallocate workloads during the course of a particular shift. If a therapist unexpectedly needs to be absent from work, a shift supervisor may elect to cover the work themselves, reallocate the work to others, or contact one of the six PRN (on call) therapists from a list which sets forth who is available for that particular shift. The PRN therapists may be called in any order and are free to decline the work. If work is slow, the shift supervisor does not send employees home but if an employee requests to leave for this reason, the shift supervisor may grant the request.

The only situation presented in the record involving shift supervisors' authority with respect to discipline concerns their assessment of an employee's being unfit for duty (e.g., intoxication). In such a situation the shift supervisor removes the individual from patient care duties and contacts Greer. It is then up to Greer to decide what ultimately to do with the individual.

Shift supervisors are not responsible for the training of therapists – such being within the purview of the Clinical Supervisor. It is the responsibility of the shift supervisor, however, to assure that new employees are competent in the different forms of treatment.

The Respiratory Therapy Department operates 7 days a week, 24 hours a day. Two of the shift supervisors cover day shifts, two cover evening shifts. A shift supervisor will work three 12-hour shifts and one 4-hour shift one week, and on alternating weeks work just three 12-hour shifts. This results in the regular absence of a shift supervisor for 16 hours each week. Moreover, the shift supervisors are entitled to vacation leave, holidays, a personal day, birthday leave and sick days which create gaps in coverage. To fill these periods the Employer utilizes relief shift supervisors from among the other therapists. Therapists volunteer to be relief shift supervisors - there being no instance where someone volunteering to be considered for this position has been turned down. There are currently 11 therapists who are designated relief shift supervisors. When called upon to fill in for a shift supervisor, they apparently function in the same capacity as the shift supervisors and receive 50 cents more per hour when acting as shift supervisors.

The job description of the shift supervisors contains three paragraphs which potentially, but certainly not conclusively, disclose supervisory indicia as set forth in Section 2(11) of the Act. <sup>21/</sup> To wit:

1. Assigns work load to each team member by following the established departmental policies & procedures and schedules personnel when necessary.

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7. Performs employee performance evaluations on their team members. Assists with interviews and hiring of personnel.

8. Assumes responsibilities for all respiratory care modalities including supervision of Respiratory Therapist on their shift and recommends disciplinary action when necessary.

Although the parties agree that the shift supervisors have supervisory authority, they did not indicate what specific indicia set forth in Section 2(11) of the Act the relief supervisors possess. Moreover, there is no job description for relief shift supervisor and therefore it is unclear whether they would in any way be involved in such issues as the evaluation of employees or the interviewing and hiring of personnel when they assume the mantle of shift supervisor.

There is a wide variance among the employees designated as relief shift supervisors with respect to the amount of time they actually cover for an absent shift supervisor. Thus, in the past year one individual substituted 383.75 hours, five individuals substituted between 100 and 150 hours, three individuals substituted from 25.25 to 35 hours, and two individuals served only 12 hours. There is also inconsistency on how regularly the substitution takes place. The Employer has 26 pay periods within a year. Three of the eleven individuals have not worked as shift supervisor since pay period 12, one since pay period 13, one since pay period 14 and one since pay period 16. Moreover, one such individual did not work as shift supervisor prior to pay period 22, one prior to pay period 15 and one prior to pay period 14. It appears from the record that certain relief shift supervisors may, as a matter of course, substitute on a rotating or voluntary basis for particular shift supervisors. It is unclear, however, whether substitution is

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<sup>21/</sup> Section 2(11) of the Act defines a supervisor as a person:

“ . . . having authority in the interest of the employer to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively recommend such action, if in connection with the foregoing, the exercise of such authority is not merely of a routine or clerical nature, but requires the use of independent judgment. . . .”

It is well established that Section 2(11) is to be interpreted in the disjunctive and “the possession of any one of the authorities listed in [that section] places the employee invested with this authority in the supervisory class.” *Ohio Power Co. v. NLRB*, 176 F.2d 385 (6th Cir. 1949). See also, *Allen Services Co.*, 314 NLRB 1060 (1994); *Queen Mary*, 317 NLRB 1303 (1995).

always voluntary. Moreover, the minimal explanation of the process does not fully account for the wide variance in the hours between the individual relief shift supervisors spent as shift supervisor, nor the long gaps in time when individual relief shift supervisor have not substituted for shift supervisors.

#### Analysis:

Where an employee completely takes over the supervisory duties of another, he/she is regarded as a supervisor under the Act. *Birmingham Fabricating Co.*, 140 NLRB 640 (1963). However, isolated supervisory substitution does not warrant a supervisory finding. *Latas de Alumino Reynolds*, 276 NLRB 1313 (1985). <sup>22/</sup> The Board has stated that, where intermittent supervision of unit employees is involved, the test is whether the part-time supervisors spent a “regular and substantial” portion of their time performing supervisory duties, or whether such substitution is sporadic and insignificant. *Aladdin Hotel*, 270 NLRB 838 (1984). This test applies even if there is a clear demarcation between the individuals’ supervisory authority and rank-and-file duties. *Canonie Transportation*, 289 NLRB 299 (1988). See also, *Billows Electric Supply*, 311 NLRB 878 (1993); *OHD Service Corp.*, 313 NLRB 901 (1994). Moreover, even if a substantial amount of time has been spent substituting for supervision, this does not necessarily mean that it will be viewed as indicating supervisory status if it has not been on a regular basis. See, e.g., *St. Francis Medical Center West*, 323 NLRB 1046 (1997).

The determination as to the supervisory status of the relief shift supervisors in respiratory therapy is problematic from several perspectives. Initially, I cannot be certain that the relief shift supervisors’ performance of the routine tasks of a shift supervisor includes assumption of the supervisory indicia that the parties agree makes the shift supervisors supervisors within the meaning of the Act. Further, the fact that any therapist in the unit can apparently volunteer to serve as a relief shift supervisor militates against a supervisory finding since it is unlikely that an employer would effectively allow unit members to vest themselves with 2(11) authority. In addition, there are issues of regular versus sporadic substitution. In this regard some relief shift supervisors appear to have worked fairly regularly as shift supervisors but only over a portion of the past year - with no indication as to whether this may be a year-to-year pattern. Moreover, there is little explanation as to how employees are actually selected to cover for shift supervisors when the need arises (e.g., is it completely voluntary, may it be mandated, does it vary depending on the nature of the supervisor’s absence, is it rotated), which could be expected to shed some light on the regularity of any given relief shift supervisor’s pattern of substitution.

Accordingly, in the absence of specific and detailed evidence allowing me to make a proper determination as to their status, I shall permit Relief Shift Supervisors Nancy C. Blair, Norman G. Bond, Ricky B. Bowling, Loretta F. Hagerman, Sherry F. Howard, Carrie Hylton, Sandra L. May, Dori A. Shortridge, Lora L. Thacker, Diana L. Smith and Rebecca A. Smith to

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<sup>22/</sup> The Employer in its brief cites several cases from the Sixth Circuit for the proposition that “it is the existence of any of the statutory authorities listed in Section 2(11), and not the actual exercise of it, which is the determinative consideration.” While this in general terms is a correct statement of the law, what I am faced with is not the sporadic exercise of authority by individuals who continually possess the authority but individuals who at most only intermittently possess the authority.

vote subject to challenge and I hereby instruct my agent conducting the election to challenge their ballots if they appear at the polls to vote.

Stipulated Supervisors:

The parties stipulated that Chief Financial Officer Danny Harris, Patient Accounts Manager Margaret Kiser, Central Registration Director Teresa Mullins, Materials Director Jackie Lowder, Controller Michelle Hagey, Reimbursement Manager Rob Moore, Information Services Manager Rusty Shanklin, Patient Financial Counseling Manager Homer Tucker, Director of Cardiopulmonary Services Linda Greer, Shift Supervisors Margaret R. Ashby, Tracey Jones and Dedra S. Robinette, Supervisor Priscilla F. Little, Receiving Clerk and Material Management Tech Supervisor Sue Slone, Control Clerk Supervisor Helen Tackett, Registrar Supervisors Rose Slone, Sandy Radcliff and Jennifer Taylor and Patient Accounting Supervisors Terra Newsome, Karen Smith and Anita Lang possess some indicia of supervisory authority within the meaning of Section 2(11) of the Act. In accordance with the parties' further stipulation that these individuals are supervisors within the meaning of the Act and I shall exclude them from the Unit.

Conclusion:

Based on the foregoing, the record as a whole, and careful consideration of the arguments of the parties at the hearing and in their briefs, I find that the following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining:

**All technical employees, skilled maintenance employees and non-professional employees employed by the Employer at its Pikeville, Kentucky facility, including application analysts, buyers, cardiovascular techs, carpenters, clerks, cooks, the copier specialist, couriers, CSS technicians, diet clerks, the edit control stat clerk, EKG/EEG techs, the electrician, the employee health assistant, EMT/emergency room techs, the equipment specialist/CRTT, financial coordinator, the food service clerk, food service workers, the general maintenance worker, histology technologists, housekeepers, HVAC technicians, information desk clerk/gift shop attendants, the information systems operator, information systems techs, inventory techs, the lab aide, licensed practical nurses, linen room workers, the mail clerk, maintenance techs, the materials management tech, the medical education coordinator, the medical lab tech, medical review/LPNs, the medical staff & PI assistant, the monitor tech/aide, nurs assist/psy aide/RTAs, nursing assistant IIs, the occupational health nurse, ORT/LRT/anesthesia aides, painter/paper hangers, paramedics, patient care attendants, the performance facilitator, pharmacy tech/IV ADD techs, phlebotomists, the plumber, plumber assistants, polysomnographic techs, the programmer, the programmer analyst, quality management techs, radiation therapists, the radiation therapy tech, radiologic technologists, the radio information systems coordinator, the receiving**

clerk, the receptionist/clinic clerk, receptionist/patient liaisons, REG polysomnographic techs, registrars, rehab techs, the residency program coordinator, respiratory therapy student, the sales representative, secretary, spec proc techs-radiology, staff technicians (CRTT/RCP), staff therapists, the surgical services mat cor, telecommunications specialist, transport aides, unit secretary/telemetry techs and the insurance verifier; *but excluding* all business office clerical employees (including cashiers, payroll coordinators, accounts receivable clerks, accounts payable clerks, reimbursement employees, patient counselors and patient accounting clerks), registered nurses, professional employees, guards, and supervisors as defined in the Act.

Accordingly, I shall direct an election among the employees in such unit.

### **DIRECTION OF ELECTION**

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by **United Steelworkers of America, AFL-CIO-CLC**.

### **LIST OF ELIGIBLE VOTERS**

In order to insure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters using full names, not initials, and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969); *North Macon Health Care Facility*, 315 NLRB 359 (1994). Accordingly, it is hereby directed that within 7 days of the date of this Decision 2 copies of an election eligibility list, containing the full names and addresses of all the eligible voters, shall be filed by the Employer with the undersigned who shall make the list available to all parties to the election. In order to be timely filed, such list must be received in Region 9, National Labor Relations Board, 3003 John Weld Peck Federal Building, 550 Main Street, Cincinnati, Ohio 45202-3271, on or before **January 18, 2002**. No extension of time to file this

list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

### **RIGHT TO REQUEST REVIEW**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 - 14th Street, N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by **January 25, 2002**.

Dated at Cincinnati, Ohio this 11<sup>th</sup> day of January 2002.

*/s/ Richard L. Ahearn*

Richard L. Ahearn, Regional Director  
Region 9, National Labor Relations Board  
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